

***United States Court of Appeals
for the Second Circuit***



**PETITIONER'S
BRIEF AND
APPENDIX**

ORIGINAL

75-4066

UNITED STATES COURT OF APPEALS
For the Second Circuit
Docket No. 75-4066

ANTOINE MIROI,

Petitioner

v.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

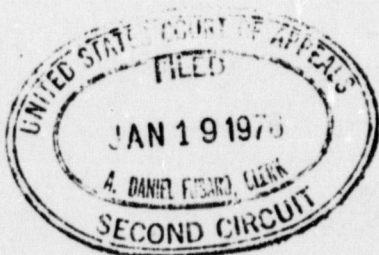
On Petition for Review of Deportation Order

PETITIONER'S BRIEF AND APPENDIX

Leon Rosen
Attorney for Petitioner
60 East 42nd. Street
New York, N.Y. 10017

Thomas J. Cahill
United States Attorney
For the Southern District
of New York
Attorney for Respondent.

Mary P. Maguire
Special Assistant
United States Attorney
Of Counsel.



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UNITED STATES COURT OF APPEALS
For the Second Circuit
Docket No. 75-4066

ANTOINE MIROI,

Petitioner,

v.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

On Petition for Review of Deportation Order

BRIEF FOR PETITIONER

This is a petition for review under 8 U.S.C. 1105(a) by the petitioner ANTOINE MIROI, of the opinion by the Board of Immigration Appeals, dated March 3, 1975.

STATEMENT OF ISSUES

Whether the Board of Immigration Appeals erred in its dismissal of an appeal from an order of Immigration Judge Henry I. Millman, denying petitioner's application under 8 U.S.C. 1253(h) for an order withholding his deportation to Haiti on his claim that he would be subject to persecution on account of his political opinion and his former employment by the assassinated Minister of Justice of Haiti.

STATEMENT OF FACTS

Petitioner Antoine Miroi, is a native and citizen of Haiti who entered the United States at New York, New York on or about July 22, 1971, as a visitor for pleasure and was

authorized to remain in the United States until August 30, 1971. He admittedly remained beyond that date, without permission and conceded his deportability under 8 U.S.C. 1251(a)(2).

At the deportation hearing, petitioner filed appropriate application with the Immigration Judge, pursuant to 8 C.F.R. 242.17(c) for an order withholding his deportation to Haiti on the ground that such deportation would subject him to persecution on account of his political opinion and close association with the former Minister of Justice of Haiti who had since been assassinated by the Tonton Macoute, the secret police of Haiti. His application was made pursuant to 8 U.S.C. 1253(h), which provides:

"The Attorney General is authorized to withhold the deportation of any alien within the United States to any country in which in his opinion, the alien will be subject to persecution on account of race, religion or political opinion, and for such period of time as he deems to be necessary for said reason."

The petitioner testified and offered testimony of other witnesses to the effect that he had been employed, as a chauffeur, by one Lucien Belizaire, the former Minister of Justice of Haiti; that the said Lucien Belizaire was discharged from his post in 1962 by President Francois Duvalier; that the said Lucien Belizaire was subsequently poisoned; that the petitioner immediately went into hiding, and remained in hiding until his departure for the United States under an assumed name; that the Tonton Macoute came to his wife's residence in Port au Prince on numerous occasions, seeking him out.

The Immigration Judge denied petitioner's application. The Board of Immigration Appeals affirmed. Petitioner seeks judicial review.

ARGUMENT

I

THE DENIAL OF PETITIONER'S APPLICATION FOR WITHHOLDING OF DEPORTATION WAS ARBITRARY, CAPRICIOUS AND AN ABUSE OF ADMINISTRATIVE DISCRETION

The testimony of petitioner and his wife and the unchallenged evidence of creditable witnesses (A-17, 18, 19)

clearly established a well founded fear of persecution by reason of political opinion and association.

While petitioner remained in hiding for many years in a remote area of Haiti, the Tonton Macoute, Haiti's secret police, sought him out. The respondent offered no evidence whatever to overcome the petitioner's claim. The finding of the Immigration Judge to the effect that the petitioner's claim of persecution is unfounded was without support in the evidence and wholly arbitrary. The statute contemplates a finding based upon competent evidence. An arbitrary finding by the Attorney General or his delegate would defeat the humane purposes of the Congress to assure that no alien will suffer the cruelty of being deliberately placed in the hands of death. SANG RYUP PARK v. BARBER 107 F. Supp. 603 (N.D.Calif. 1952).

Petitioner's constitutional right to due process of law was abridged. An alien who is sought to be deported, and who avails himself of a provision of law concerning a matter so vital that his very life and liberty may depend on its full application, is entitled to the thorough protection of the Fifth Amendment of the Federal Constitution, U.S. ex rel. WATTS v. SHAUGHNESSY 200 F.2d. 288 (2d. Cir.1952).

What is at issue is whether a so called finding concerning petitioner's fear of persecution if deported to Haiti was arbitrary, capricious, and so unfounded in the evidence adduced at the hearing, as to constitute a denial of due process of law.

As the Court observed in U.S. ex rel. WATTS, Supra, "The provision in question is, by strong analogy, consonant with our historic tradition of affording asylum to the persecuted, a tradition which reaches back beyond the birth of the Fifth Amendment itself."

II

THE IMMIGRATION JUDGE ERRED IN RELYING UPON THE UNSUPPORTED WRITTEN OBSERVATIONS OF THE DEPARTMENT OF STATE

Prior to the administrative hearing, petitioner was interviewed on his claim of persecution by an unidentified

officer of the Immigration and Naturalization Service (A-24). Trial counsel objected to the introduction in evidence, of correspondence based on a summary of that interview (A-25). The Immigration Judge marked the correspondence for identification "subject to the testimony of the Immigration official with whom the interview was conducted on September 2, 1972." (emphasis provided). The Immigration official was never called to testify. Nevertheless, the Immigration Judge placed total reliance upon the correspondence (A-7). Letters from the State Department do not carry the guarantees of reliability which the law demands of admissible evidence. A frank, but official, discussion of the political shortcomings of a friendly nation is not always compatible with the high duty to maintain advantageous diplomatic relations with nations throughout the world. The traditional foundation required of expert testimony is lacking; nor can official position be said to supply an acceptable substitute. No hearing officer or court has the means to know the diplomatic necessities of the moment, in the light of which the statements must be weighed. KASRAVI v. IMMIGRATION AND NATURALIZATION SERVICE, 400 F.2d 675 (9th Cir. 1968).

The danger in reliance upon State Department correspondence is best illustrated by the letter of March 26, 1973 of the District Director, requesting the Department of State's recommendation (A-20). In that letter the District Director stated, referring to petitioner's claim, "he said he was never himself bothered or threatened, nor have his wife and children been bothered. The police have not come to look for him at his home there but he knows and believes that he will be hurt if he returns to Haiti."

The testimony of petitioner and his wife was quite the contrary of the statement contained in the District Director's letter of March 26, 1973. Their unchallenged testimony was to the effect that petitioner, under an assumed name, hid in the town of Hinche while the secret police paid frequent visits to his home, searching for his whereabouts. To protect his anonymity, the petitioner denied himself one of life's most basic pleasures. Except for one isolated instance, he did not see his own children during his nine years in hiding, for fear that visitation with his children would reveal his whereabouts and possibly endanger their well-being. The only reasonable conclusion to be drawn from such testimony is that petitioner was sought by the secret police for interrogation and arrest. The only reasonable assumption to be further drawn is that his interrogation and arrest was sought because of his association with the deposed Minister of Justice of Haiti, whom the dictator of Haiti viewed as an enemy of the state.

CONCLUSION

FOR THE FOREGOING REASONS, THE DECISION OF THE BOARD
OF IMMIGRATION APPEALS SHOULD BE VACATED AND REVERSED.

Respectfully submitted,

LEON ROSEN
Attorney for Petitioner
60 East 42nd. Street
New York, New York 10017
(212) 972 0870

APPENDIX

THB:ml
75-1198

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- - - - -x

ANTOINE MIROI,

Petitioner, :

- v -

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

: PETITION FOR REVIEW
OF ADMINISTRATIVE
: AGENCY ACTION

: Docket No. 75-4066

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2. Notice to effect voluntary departure dated March 25, 1975.
3. Warrant of deportation dated April 24, 1975.
4. Decision of the Board of Immigration Appeals (the "Board") dated March 3, 1975.
5. Petitioner's notice of appeal to the Board dated November 8, 1974.
6. Decision of the Immigration Judge dated October 31, 1974.
7. Transcript of deportation proceedings in the Matter of Antoine Miroi Meleance.

8. Order to Show Cause and Notice of Hearing dated June 14, 1972 (Exhibit #1 of the deportation proceedings).

9. Affidavit of Antoine Miroi Meleance (Exhibit #2 of the deportation proceedings).

10. Recommendation of United States Department of State to the District Director of the Immigration and Naturalization Service dated April 10, 1973 (Exhibit #3 of the deportation proceedings).

11. Request from the Immigration and Naturalization Service to the United States Department of State regarding the petitioner's application for political asylum dated March 26, 1973.

12. Affidavit of Antoine Meleance dated November 15, 1972.

13. Letter from United States Department of State concerning petitioner's request for political asylum dated May 30, 1974 (Exhibit #4 of the deportation proceedings).

14. Letter from the Immigration and Naturalization Service concerning the petitioner's request for political asylum dated December 17, 1973.

15. Affidavit of Antoine Miroi dated December 13, 1973.

16. Affidavit of Gerard Martin dated November 21, 1972 (Exhibit 5A of the deportation proceedings).

17. Affidavit of Yves Marie Regis dated November 22, 1972 (Exhibit 5B of the deportation proceedings).

18. Affidavit of HaTan G. Emanuel dated
November 6, 1972 (Exhibit 5C of the deportation proceedings).

Respectfully submitted,

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for Respondent

THOMAS H. BELOTE
Special Assistant United
States Attorney

Of Counsel

DECISION OF BOARD OF IMMIGRATION APPEALS

United States Department of Justice
Board of Immigration Appeals
Washington, D.C. 20530

MAR 3 - 1975

File: A19 525 701 - New York

In re: ANTOINE MIROI

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Seymour Rosenberg, Esquire
11 West 42nd Street, Room 1700
New York, New York 10036

ON BEHALF OF I&N SERVICE: Paul C. Vincent
Appellate Trial Attorney

ORAL ARGUMENT: February 13, 1975

CHARGE:

Order: Section 241(a)(2), I&N Act (8 U.S.C.
1251(a)(2)) - Nonimmigrant
visitor for pleasure - re-
mained longer than permitted

APPLICATION: Withholding of deportation under section
243(h)

This is an appeal from an order of an immigration judge, dated October 31, 1974, which finds the respondent deportable as charged, which denies his application for withholding of deportation under section 243(h) of the Immigration and Nationality Act, and which grants him the privilege of voluntary departure. The appeal will be dismissed.

A19 525 701

The respondent, an alien who is a native and citizen of Haiti, entered the United States on or about July 22, 1971 as a nonimmigrant visitor authorized to remain until August 30, 1971. He has remained beyond that date without permission. The allegations contained in the Order to Show Cause were admitted and deportability was conceded. Our review of the record satisfies us that deportability has been established by evidence which is clear, convincing and unequivocal.

The facts have been fully stated in the immigration judge's opinion and need not be repeated.

The respondent's application for withholding of deportation is based on his claim that he was the chauffeur of Lucien Belizaire, the Minister of Justice who was discharged from his post in 1962 by President Duvalier. Upon Belizaire's exile the respondent claims that he and his family went into hiding. He assumed a different name. The police, he alleges, came to his wife's residence on a number of occasions looking for him. The respondent claims that a friend obtained a passport and visa for him in the name of Antoine Miroi which he used in effecting departure from Haiti in 1971.

The record shows that the respondent's application for political asylum has been given careful consideration by the Office of Refugee and Migration Affairs of the United States Department of State. The letter dated April 10, 1973, in pertinent part, follows:

We do not believe that Mr. Miroi would suffer persecution if he returned to Haiti. His employment as driver to Mr. Belizaire was terminated over ten years ago. Mr. Miroi remained in Haiti without any apparent problems until he came to the United States. It is hardly likely that the Haitian Government would have left him unmolested for such a long period of time if he was politically sensitive in any way.

In a letter dated May 30, 1974 based upon a supplemental affidavit of the respondent, the State Department advised:

A19 525 701

On the basis of the information provided, we still do not believe that Mr. Miroi has made a valid claim to asylum. It is noted that in his original statement to the Service he stated he had never been bothered by the police, nor had his family. He further states that the police never came to look for him at his home. This is in direct contradiction to his later statement in support for his claim to asylum. Further, the job which he claims would cause him to be persecuted was terminated some twelve years ago. There has been a change of Government in Haiti in the intervening years. It is highly unlikely that Mr. Miroi would face persecution should he return to Haiti at this time.

The respondent has the burden of proof to establish that he would be persecuted by reason of his race, religion or political opinion if deported to Haiti. We find after a careful review of the evidence that the respondent has failed to show a well-founded fear that his life or freedom will be threatened in Haiti on account of his race, religion, nationality, membership of a particular social group or political opinion. We therefore conclude that he will not be subject to persecution if deported there. See Matter of Dunar, Interim Decision 2192 (BIA 1973). We accordingly shall uphold the immigration judge's decision and dismiss the appeal.

ORDER: The appeal is dismissed.

FURTHER ORDER: Pursuant to the immigration judge's order, the respondent is permitted to depart from the United States voluntarily within 35 days from the date of this order or any extension beyond that time as may be granted by the District Director; and in the event of failure so to depart, the respondent shall be deported as provided in the immigration judge's order.

Chairman

DECISION OF IMMIGRATION JUDGEUNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

File: A19 525 701 - New York, N.Y.

OCT 31 1974

In the Matter of:)

ANTOINE MIROU)

In Deportation Proceedings

Respondent)

CHARGE: I & N Act - Section 241(a)(2) - remained longer -
nonimmigrant visitor for pleasure.

APPLICATION: Voluntary departure; withholding of deportation to Haiti.

In Behalf of Respondent:

Seymour Rosenberg, Esq.
11 West 42nd Street
New York, N.Y. 10036

In Behalf of Service:

John P. Ruggiero, Esq.
Trial Attorney
New York, N.Y. 10007

DECISION OF THE IMMIGRATION JUDGE

The respondent is a 40 year old married male alien, a native and citizen of Haiti who entered the United States at the port of New York on or about July 22nd, 1971, at which time he was admitted as a non-immigrant visitor for pleasure and was authorized to remain in the United States until August 30, 1971. Deportability has been conceded and is found to be established as charged in the Order to Show Cause.

The respondent's wife is now in the United States without lawful status, having entered this country on or about June 29, 1973 as a visitor and having overstayed her authorized leave. The respondent

has six children by his wife all of whom now reside with his mother in Haiti. He stated that if permitted to leave voluntarily he would attempt to go to France and has sufficient funds for that purpose. No evidence of any criminal record has been developed against him.

For the purpose of this decision the respondent is found to meet the minimum requirements for eligibility for voluntary departure and that privilege will be extended to him. In view of the fact that he has remained in the United States for over three years without lawful authority he will be given a final opportunity to leave voluntarily by December 5, 1974. Upon his failure to do so he should be deported. He has designated France as the country to which he prefers to be deported and deportation will therefore be directed to that country in the first instance and if it cannot be effected there then to Haiti, the country of his nationality.

The respondent has requested the withholding of deportation to Haiti pursuant to Section 243(h) of the Immigration and Nationality Act on the ground that he would be subject to persecution if deported to that country. His claim is based on the allegation that he was the chauffeur of Lucien Belizaire, the minister of justice who was discharged from his post and exiled in 1962 by President Duvalier.

In support of his claim the respondent has ~~testified~~ substantiated as follows: "he was the chauffeur for Belizaire for a number of years until

the latter's discharge in 1962; upon Salimiro's exile he (respondent) went into hiding in Hinche leaving his wife and family behind at Port-au-Prince; that he began using the name Antoine Miroi, his father's first name, rather than Antoine Melancon, his father's family name, which he had previously used; that while in Hinche, the police came to his wife's residence on a number of occasions looking for him; that a friend obtained a passport and visa for him in the name Antoine Miroi, which he used in effecting departure from Haiti in 1971. According to his testimony while at Hinche he worked as a mechanic and did odd jobs in order to earn money to support his wife and children; and during that time, his wife came to visit him approximately once a month and gave birth to four children ranging in age from ten to three years. He stated that he did not see any of the children except the oldest one who accompanied his wife to Hinche on one occasion, and that the children's births were all registered in Port-au-Prince in the name Melancon.

Respondent's wife, who testified as a witness in his behalf, testified substantially as follows: she married respondent in Haiti when he was working as a chauffeur for Salimiro at which time her husband was living with her at Port-au-Prince under the name of Antoine Miroi Melancon; that in 1962, after Salimiro was exiled, her husband left Port-au-Prince and went to Hinche; that she remained in Port-au-Prince but visited him once or twice a month by truck; that between 1962 and 1971 she bore four children, only one of whom respondent saw on the

occasion of her visit to him with the child about May 1971; that while respondent was in Kinshasa the Tonton Macoute came to her house looking for her husband under the name Antoine Kiroi Moleones; that on these occasions she told them that she didn't know where her husband was and they departed; that although she was obviously pregnant on some of these occasions they never asked her who fathered the children she was bearing nor did they ever inquire as to the reasons for her absence during the times that she visited her husband; that while at Kinshasa her husband used the name Antoine Kiroi to evade the Tonton Macoute; that she last saw her husband in Haiti about May 15, 1971 and did not learn of his departure for the United States until August 1971 through a friend; that she came to the United States on June 29, 1973 to visit her husband and has remained in this country since.

In addition to the foregoing testimony the respondent has submitted affidavits of three individuals which state that the respondent was a personal chauffeur to Mr. Delisaire from 1960 to 1962 and after Delisaire's discharge respondent went into hiding until he came to the United States, and that his life would be endangered if he were to return to Haiti.

The respondent's request for political asylum has been given careful consideration by the office of Refugees and Migration Affairs of the Department of State. In a letter dated April 13, 1973 and another letter dated May 20, 1974 based upon a supplemental affidavit of respondent, that office has stated that "we are unable to conclude that he

(respondent) should be exempted from regular immigration procedures on the ground that he would suffer persecution on account of race, religion, nationality or political opinion, or membership in a particular social group should he return to Haiti." While this opinion is not binding in the instant proceeding it is entitled to weight as an advisory opinion emanating as it does from the branch of the government concerned with foreign affairs. Aachari v. INS, 396 F. 2nd 391 (9 Cir., 1968); Sheng v. INS 400 F. 2nd. 678 (9 Cir., 1968) cert. den. 393 US 1054; Torres-Campos et al v. INS, memo 9 Cir., December 5, 1973.

Independently of the State Department's conclusion, the record in this case does not justify favorable consideration of respondent's application for withholding of deportation. His employment as chauffeur for Belizaire terminated over twelve years ago. There is no evidence that he or any immediate member of his family was politically active in Haiti. He has acknowledged that he himself has never had anything personal to do with Duvalier and that he is not on any proscribed list. Though he claims that he went into hiding and that his wife was visited frequently by the Tonton Macoute looking for him, the evidence in this connection is not convincing. The testimony of respondent's wife that the Tonton Macoute departed simply after being told that she did not know her husband's whereabouts despite the fact she was pregnant on a number of their visits, reflects a marked lack of curiosity on the part of this group allegedly attempting to locate the respondent. Moreover the

respondent was able to obtain a passport and visa in the name Antoine Miroi, which could have alerted any interested official to his identity despite the testimony that he used the name Antoine Miroi Melcance prior to that time. Finally he was able to depart from Haiti without any interference.

Under 8 CFR 244.17(c) the respondent is charged with the burden of establishing he would be subject to persecution if deported to Haiti. He has failed to satisfy this requirement. The evidence presented in support of his claim does not justify a finding that he would be subject to persecution because of race, religion, political opinion, nationality or membership in a particular social group within the purview of Section 243(h) of the Immigration and Nationality Act as amended, if deported to Haiti. *Lena v. INS* 379 F. 2nd, 536 (7 Cir., 1967); *Hymowitz v. INS* 382 F. 2nd, 98 (7 Cir., 1967). Consequently his application for withholding of deportation to Haiti should be denied.

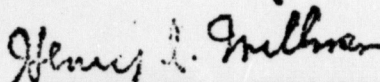
ORDER: IT IS ORDERED that in lieu of an order of deportation respondent be granted voluntary departure without expense to the government to be effected on or before December 5, 1974 and under such conditions as the District Director shall direct.

IT IS FURTHER ORDERED that if respondent fails to depart when and as required the privilege of voluntary departure shall be withdrawn without further notice or proceedings, and the following order shall there-

upon become immediately effective: the respondent shall be deported from the United States to France on the charge contained in the Order to Show Cause.

IT IS FURTHER ORDERED that if the aforementioned country advises the Attorney General that it is unwilling to accept the respondent into its territory or fails to advise the Attorney General within three months following original inquiry whether it will or will not accept respondent into its territory the respondent shall be deported to Haiti.

IT IS FURTHER ORDERED that respondent's application for withholding of deportation to Haiti under Section 243(h) of the Immigration and Nationality Act, as amended, be denied.


HENRY F. MILLMAN
Immigration Judge

AFFIDAVIT OF ANTOINE MELEANCE
DATED NOVEMBER 15, 1972

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) SS:

Mr. ANTOINE MELEANCE, being duly sworn, deposes and says:

That after his boss, Mr. Lucien BELIZAIRE, was fired from his post of Minister of Justice in 1962, and to whom he was the personal Chauffeur from 1950 to 1962, he swiftly disappeared in a lost village in Haiti (Hinche), changing his name from Antoine MELEANCE (his father's family name) to Antoine MIROI (his father's first name), fearing for his life.

His boss was later on poisoned mysteriously.

He traveled to the United States under the name of ANTOINE MIROI, directly from Hinche where he was hiding.

If I had to return to Haiti, I would fear for my life.

Antoine Meleance
ANTOINE MELEANCE

Sworn to before me
this 15 day of November, 1972

[Signature]
SEYMOUR ROSENBERG
NOTARY PUBLIC, State of New York
Qualified in New York City
No. 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 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AFFIDAVIT OF ANTOINE MIROI
DATED DECEMBER 13, 1973

ANTOINE MIROI, being duly sworn, deposes and says:

That he was a chauffeur from 1950 to 1962 to Mr. Lucien BELIZAIRE, Minister of Justice under the Presidency of Doctor DUVALIER.

That Mr. BELIZAIRE lost his job and had to go into exile in 1962. When Mr. Belizaire lost his job, I was home and I heard he was in trouble and I heard that the Tonton Macoute were looking for me also. I immediately left my home, my wife, my children and went into hiding on the hills of Haiti and I changed my last name from Meleance to Miroi, the name I have been using since.

The name of the town I was hiding was HINCHE, which is about five to six hour car drive from Port-au-Prince. I stayed in this town of HINCHE until I came to the United States, in July 1971, a time of almost 10 years that I never returned to my home of Port-au-Prince.

During that time, my wife would come to visit me approximately once every month. During that nine-ten year period she visited me, she brought one of my children to visit me, once.

I have six children with my wife and except for this one occasion I have not seen any of them. Of the six children I have with my wife, three were born while I was in hiding in Hinche and I have never seen them either.

The only way I managed to get out of Haiti is that friends of mine got me a passport in my assumed name and also obtained a visa for me in my assumed name. Personally I never went near the American Embassy. During the time I was hiding, the police continually checked my house, asking for my whereabouts

Affidavit of Antoine Miroi
dated December 13, 1973

A-16

and I honestly believe that if I return to Haiti, I would suffer physical harm.

Antoine Miroi
ANTOINE MIROI

Sworn to before me

this 13th day of December 1973

Seymour Rosenberg
Notary Public
State of New York
Qualified Westchester Co.
Expires March 30, 1974
8651610

AFFIDAVIT OF GERARD MARTIN
DATED NOVEMBER 21, 1972

STATE OF NEW YORK)
) SS:
 COUNTY OF NEW YORK)

Mr. GERARD MARTIN, being duly sworn, deposes and says:

That he lives at 361 Clinton avenue, Apt. 8-A, Brooklyn, NY 11238.

That he has known Mr. Antoine MELEANCE for about 25 years.

That they first got acquainted when Mr. Lucien BELIZAIRE was Minister of the Labor Department, at which time Mr. Gerard MARTIN also worked for the Labor Department.

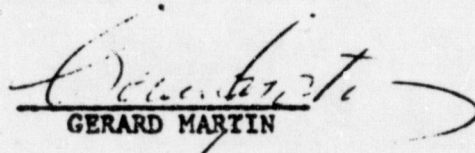
That Mr. Antoine MELEANCE, being already the personal chauffeur to Mr. BELIZAIRE, when taking him to his office every morning, used to stop to talk with some of us in the Labor Department. This way, we became friends and we continued seeing each other even after Mr. Lucien BELIZAIRE was transferred to the Department of Justice.

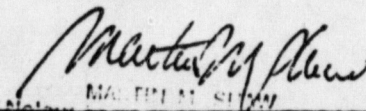
That we all feared for Mr. Meleance's life when we learned that Mr. Belizaire was fired from his post of Minister of Justice and later on poisoned mysteriously, and I was happy to know that Mr. Meleance was hiding somewhere at that time.

There is no doubt in my mind that Mr. Meleance's life would be in real danger should he go back to Haiti.

Sworn to before me

this 21st day of November 1972


 GERARD MARTIN


 Notary Public
 No. 00-10615
 Qualified in Westchester County
 Commission Expires March 20, 1973

AFFIDAVIT OF YVES MARIE REGIS
DATED NOVEMBER 22, 1972

STATE OF NEW YORK)
)
 COUNTY OF NEW YORK) SS:

Mr. Yves Marie REGIS, being duly sworn, deposes and says:

That he lives at 221 Martense Street, Brooklyn, NY 11226.

That he has known Mr. Antoine MELEANCE (also known as Miroi since he has been hiding in Haiti and has taken this name in clandestineness) since childhood and has always been in touch with him.

That he is thoroughly familiar with his situation in Haiti.

That Mr. Antoine MELEANCE was the personal chauffeur to Mr. Lucien BELIZAIRE from 1950 to 1962.

That Mr. Belizaire was fired from his post of Minister of Justice and later on poisoned mysteriously.

That Mr. Antoine MELEANCE had to hide at that time to protect his life, until he came to the United States.

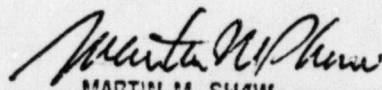
That I honestly believe that Mr. Antoine Meleance's life would be in danger should he go back to Haiti.

Should you want to contact me personally, please do so before the end of December 1972, at which time I shall have to leave the United States.

Sworn to before me
 this 22nd day of November 1972



 Mr. Yves Marie REGIS



 Notary Public, State of New York
 No. 60-3620615
 Qualified in Westchester County
 Commission Expires March 30, 1973

AFFIDAVIT OF HALLAN G. EMANUEL
DATED NOVEMBER 6, 1972

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) SS:

Mr. Hallan G. EMANUEL, being duly sworn, deposes and says:

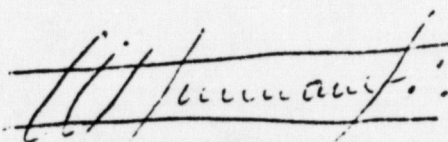
That I live at 355 Clinton avenue, Apt. 8-E, BROOKLYN, NY 11238.

That Mr. Antoine MELEANCE (Miroi) is my cousin, so we know each other pretty well and I am quite familiar with his situation in Haiti.

He used to be the personal chauffeur, from 1950 to 1962, to the Minister of Justice, who was fired from his post in 1962 and later on poisoned mysteriously.

That after Mr. Lucien BELIZAIRE, the Minister of Justice, was fired from his post in 1962, my cousin quickly disappeared in a small village in Haiti, changing his name from Antoine MELEANCE to Antoine MIROI (his father's first name).

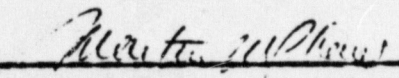
I honestly believe that if Mr. Meleance went back to Haiti, his life would be in danger.



HALLAN G. EMANUEL

Sworn to before me .

this 6th day of November 1972


MARTIN M. SHAW
Notary Public, State of New York
No. 60-3620615
Qualified in Westchester County
Commission Expires March 20, 1973

LETTER FROM DISTRICT DIRECTOR TO DEPARTMENT
OF STATE DATED MARCH 26, 1973

20 West Broadway
New York, New York 10007
March 26, 1973

A19 525 701 DB/MM

Director
Department of State
Office of Refugee and Migration Affairs
Washington, D. C.

Dear Sir:

Your recommendation is requested in the case of Antoine MIROI who has made application for political asylum.

In an interview at this office on September 12, 1972 he stated he was born on November 20, 1934 in Port Margot, Haiti. He stated he is also known as Antoine Miroi MELEANCE. He claims this is his correct name but he obtained his passport in the name Antoine Miroi to elude being detected on leaving Haiti. He claimed a friend went to a travel agent and secured a passport for him. He is employed as a machinist.

He resides with a cousin of his mother, Hallan Emanuel, a lawful resident of the United States. His wife, Monique Ste. Croix and seven children, all reside in Haiti.

He claims he cannot return to Haiti because he had worked as a chauffeur for the Minister of Justice, Lucien Belizaire, who was arrested and exiled by Duvalier. Mr. Belizaire has since died in exile. A brother of Mr. Belizaire is in the United States now.

He said he was never himself bothered or threatened nor have his wife and children been bothered. The police have not come to look for him at his home there but he knows and believes he will be hurt if he returns to Haiti.

Attached for your consideration are four affidavits submitted in support of his request for asylum.

Very truly yours,

SOL MARKS
DISTRICT DIRECTOR
NEW YORK DISTRICT

Enclosures

cc: Seymour Rosenberg, Esq.
11 West 42nd Street
New York, New York 10036

LETTER OF DEPARTMENT OF STATE TO DISTRICT
DIRECTOR DATED APRIL 10, 1973



DEPARTMENT OF STATE
N.Y. MAIL ROOM, Washington, D.C. 20520

1973 APR 16 PM 2:44

RECEIVED

APR 19 1973 APR 10 1973

REPORTING BRANCH

Dear Mr. Marks:

I have received your letter of March 26, 1973, concerning the request for asylum of Antoine Miroi, (A19 525 701), a citizen of Haiti.

We do not believe that Mr. Miroi would suffer persecution if he returned to Haiti. His employment as driver to Mr. Belizaire was terminated over ten years ago. Mr. Miroi remained in Haiti without any apparent problems until he came to the United States. It is hardly likely that the Haitian Government would have left him unmolested for such a long period of time if he was politically sensitive in any way.

Unless Mr. Miroi can provide more substantial information, we are unable to conclude that he should be exempted from regular immigration procedures on the grounds that he would suffer persecution on account of race, religion, nationality, political opinion, or membership in a particular social group should he return to Haiti. Should Mr. Miroi present additional information which to the Service seems to require further review, we will be glad to do so.

RECEIVED

Sincerely,

APR 19 1973

Orson W. Trueworthy
Acting Director
Office of Refugee and
Migration Affairs

DEPT. OF STATE BRANCH

Mr. Sol Marks,
District Director,
Immigration and Naturalization Service,
20 West Broadway,
New York, New York 10007.

EXHIBIT

3

AUG 7 / 73

10/1/74

LETTER OF DISTRICT DIRECTOR TO DEPARTMENT
OF STATE DATED DECEMBER 17, 1973

20 West Broadway
New York, New York 10007

December 17, 1973

119-525 701 DD/IN

Director
Department of State
Office of Refugee and Migration Affairs
Washington, D. C. 20520

Dear Sir:

On March 26, 1973 this Service requested your recommendation on the political asylum case of Antoine Miroi.

We were advised on April 10, 1973 that on the basis of the information provided an unfavorable decision would be made unless Mr. Miroi presented additional facts.

Attached is an affidavit submitted on December 13, 1973 to substantiate the above claim along with Mr. Miroi's original claim for asylum.

Very truly yours,

Sol A. Marlowe

SOL MARLOWE
DISTRICT DIRECTOR
NEW YORK OFFICE

LETTER OF DEPARTMENT OF STATE TO DISTRICT
DIRECTOR DATED MAY 30, 1974



DEPARTMENT OF STATE

Washington, D.C. 20520

MAY 30 1974

Dear Mr. Marks:

Reference is made to your letter of March 26, 1973 concerning the request for political asylum of Mr. Antoine MIROI, A19 525 701, a resident of Haiti,

On the basis of the information provided, we still do not believe that Mr. Miroi has made a valid claim to asylum. It is noted that in his original statement to the Service he stated he had never been bothered by the police, nor had his family. He further states that the police never came to look for him at his home. This is in direct contradiction to his later statement in support for his claim to asylum. Further, the job which he claims would cause him to be persecuted was terminated some twelve years ago. There has been a change of Government in Haiti in the intervening years. It is highly unlikely that Mr. Miroi would face persecution should he return to Haiti at this time.

Unless Mr. Miroi can provide more substantial information, we are unable to conclude that he should be exempted from regular immigration procedures on the grounds that he would suffer persecution on account of race, religion, nationality political opinion, or membership in a particular social group should he return to Haiti. Should Mr. Miroi present additional information which to the Service seems to require further review, we will be glad to give further consideration to the case.

Sincerely,

Louis A. Wiesner

Louis A. Wiesner
Director
Office of Refugee and
Migration Affairs

Mr. Sol Marks,
District Director,
Immigration and Naturalization Service,
20 West Broadway,
New York, New York 10007.

EX-111

OCT 15/74

EXCERPTS OF TRANSCRIPT OF DEPORTATION HEARING

1 Q And who appeared as their father?

2 A My name is yet on the birth certificate of course. That is why these
3 people used to come and they were looking for me all of the time.

4 Q And they always bothered your wife, is that correct?

5 A My wife-they bothered her.

6 Q Do you recall making a claim for refugee status wherein you were inter-
7 viewed by an officer of this service regarding that claim?

8 A Yes, yes.

9 Q Here on the 14th floor do you recall?

10 A Yes on this floor here yes.

11 Q Was it a woman who interviewed you. Do you recall?

12 A A lady in a room.

13 Q And she asked you the basis for your claim for refugee status do you
14 recall?

15 A Yes she did.

16 Q And you also submitted affidavits of certain persons with your claim.
17 Is that correct?

18 A Yes.

19 Q I wish to offer into evidence the memorandum of the Immigration Service
20 setting forth the results of the interview.

21 COUNSEL: I want to see the original statement. He must have signed a
22 statement...

23 IMMIGRATION JUDGE: Well wait. Continue Mr. Ruggiero what is your...

24 TRIAL ATTORNEY: I offer the letter to the Director, Department of State
25 Office of Refugee and Migration Affairs Washington, D.C. above the name of
26 Sol Marks. This is submitted by our office containing the results of an

- 15 -
TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

1 interview, the original signed statements gotten in these interviews toget-
2 her with one, two, three, four affidavits which were submitted by the
3 applicant, the respondent herein and the answer of the Department of State
4 to that memorandum.

5 COUNSEL TO IMMIGRATION JUDGE: I object to the following documents, I object
6 one, to the letter of Mr. Marks to the Director of the Department of State.

7 IMMIGRATION JUDGE: Yes.

8 COUNSEL: Number two I object to the letter of the Department of State to
9 Mr. Marks because it's not relevant to this hearing?

10 IMMIGRATION JUDGE: What is your objection now?

11 COUNSEL: For the memorandum between Mr. Marks and the State Department.

12 COUNSEL: Let me see.

13 IMMIGRATION JUDGE: All right now counsel will you state specifically what
14 is your objection is to the memorandum or letter from Mr. Marks to the State
15 Department dated March 26, 1973.

16 COUNSEL: My objection to the admission ^{of} Mr. Marks's letter to the State
17 Department one is Mr. Marks did not interview my client, number 2 even
18 though his agent may have interviewed my client I believe some of the
19 statements that she alleges or he alleges rather, in this letter are
20 incorrect. The best evidence of what ever statements my client may or may
21 not have given the Immigration Service would be signed statements by him
22 or that recollection of the interviewer...

23 TRIAL ATTORNEY: May I make a statement?

24 IMMIGRATION JUDGE: Yes.

25 TRIAL ATTORNEY: Now one counsel was present at the time the interview was
26 taken?

1 COUNSEL: No I was not.

2 TRIAL ATTORNEY: Was not. Did counsel receive a copy of the statement that
3 was being sent to the State Department, the Bureau of Refugee or Migration
4 Affairs?

5 COUNSEL: Yes.

6 IMMIGRATION JUDGE: When you say the statement you mean the letter dated...

7 TRIAL ATTORNEY: The letter of March 26, not of December...

8 IMMIGRATION JUDGE: I understand. Yes.

9 TRIAL ATTORNEY TO COUNSEL: You did receive it sir?

10 A Right.

11 Q You raised no objection about the correction up until that point?

12 A Absolutely.

13 Q I feel that counsel if there was anything that was incorrect the correc-
14 tion should have been made at that time. It is a very important factor.

15 COUNSEL: I violently object to that kind of rhetoric.

16 IMMIGRATION JUDGE: Mr. Ruggiero just a moment. Now counsel just a moment
✓ 17 please. This is an independent proceeding. I may attach some weight to this
18 correspondence but I am not bound by it. In view of the objection raised
19 by counsel I think the appropriate procedure is to produce the person with
20 whom the interview was conducted, if there is an issue as to the accuracy
21 of the statements contained in it imputed to the respondent.

22 IMMIGRATION JUDGE: Off the record. On the record. At this point I will
✓ 23 mark the correspondence at the affidavit attached thereto as an exhibit
24 for identification subject to the testimony of the Immigration official with
25 whom the interview was conducted on September 12, 1972. So it will be marked
26 Exhibit 3 for identification. You may continue with the interrogation of the

1 respondent?

2 TRIAL ATTORNEY: Yes sir.

3 TRIAL ATTORNEY TO RESPONDENT:

4 Q Sir what was the address you lived at in Haiti just prior to coming to
5 the United States? The exact address?

6 A I have not lived there but it was my wife's address it was 39(inaudible)...

7 Q Now there is a photograph in your passport, where was that photograph
8 taken?

9 A I had the photos taken in Hinche.

10 Q That photograph was attached to your passport when you left Haiti.
11 Correct?

12 A Yes, yes.

13 Q And that is the passport that was stamped when you exited Haiti to come
14 to the United States. Correct?

15 A It is the same passport.

16 Q You weren't inspected prior to leaving Haiti. Correct?

17 A I have nothing to do with any of the authorities. I didn't go to the
18 police to have my fingerprints taken. It was his friend I had mentioned
19 before who had arranged everything for me. He did everything for me.

20 Q Where is this friend now?

21 A He's still in Hinche.

22 Q Now I ask you again weren't you inspected at the airport prior to boarding
23 the plane to depart to the United States?

24 A My passport was looked at, checked, and I got on the plane and the people
25 who did that were employees of the airport and they had nothing to do with
26 the government. If you think of the Tonton Macoute, I had trouble only with

TRANSCRIPT OF HEARING

- 1 Q Now you say you have six children. When was the last child born?
- 2 A She's a little over three years old.
- 3 Q Born about 1970 then?
- 4 A Yes she's about three years, a little bit older than three years.
- 5 Q Did you ever see that child?
- 6 A No she's at Port-au-Prince.
- 7 Q You never saw her since she was born?
- 8 A No I never saw the child. I only saw my wife each month when she came
- 9 to Hinche.
- 10 Q She came to you when she was pregnant also is that it?
- 11 A She came also to see me while she was expecting the child. She came
- 12 by car.
- 13 Q And the child, the next oldest child, the one just before the three year
- 14 when was that child born?
- 15 A That is a boy and he is now six years old.
- 16 Q Did you ever see him?
- 17 A He's in Port-au-Prince.
- 18 Q I didn't ask you that. Have you ever seen him?
- 19 A I only saw his picture.
- 20 Q The child before that six year old when was he born?
- 21 A Eight years old.
- 22 Q Did you ever see that child?
- 23 A No.
- 24 Q How many children do you have that you never saw?
- 25 A The three youngest children I never saw. The youngest I did.
- 26 Q When was the last time that you saw the others?

1 A The older children before I left Port-au-Prince to come here I also
2 saw my six year old daughter once when my wife brought her with her to see
3 me on one of the visits.

4 Q But sir you testified earlier that the children never came to see you
5 in Hinche. Now you are changing your testimony, is that correct?

6 A It is true that the children never came to visit me in Hinche but I just
7 now remember that one single time their mother brought the 10 year old
8 along to see me.

9 Q But she never brought any other children along in the 9 years that you
10 allege to be away from your wife and family. You say that was the only
11 occasion that you ever saw any of your children is that correct?

12 A That is very true all I saw of my children were photographs of theirs
13 which my wife occasionally brought along.

14 Q Now how did you support yourself from 1962 until 1971?

15 A Well I had lived with a friend of mine. Often I did a little work. It
16 was more like help work and he gave me my place to sleep and what little money
17 I did with little occasional jobs I gave to my wife when she came to see me.

18 TRIAL ATTORNEY: Let me go off the record a minute.

19 IMMIGRATION JUDGE: On the record. You may continue Mr. Ruggiero.

20 TRIAL ATTORNEY TO RESPONDENT: You were born in the town of Port Margot
21 withdrawn. On the birth certificates of the three children who were born
22 that you never saw. Were the births of those three children registered
23 in Port-au-Prince?

24 A Yes if you mean do they have birth certificates. They have.

25 Q What name did appear for them on each of their birth certificates please?

26 A Melance.

TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

